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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. 20 Cr. 110 (LJL)

5 LAWRENCE RAY,

6 Defendant.

7 -----x Teleconference

8 May 29, 2020  
9 12:05 p.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN  
16 United States Attorney for the  
17 Southern District of New York  
18 BY: DANIELLE R. SASOON  
19 MARY ELIZABETH BRACEWELL  
20 LINDSEY KEENAN  
21 Assistant United States Attorneys

22 FEDERAL DEFENDERS OF NEW YORK  
23 Attorneys for Defendant  
24 BY: MARNE L. LENOX  
25 PEGGY CROSS-GOLDENBERG

ALSO PRESENT:

SPECIAL AGENT KELLY MAGUIRE, FBI

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1                   THE COURT: Good afternoon. This is Judge Liman.  
2 Apologies for being late for the call. Earlier AT&T wanted to  
3 put me on listen-only mode. I didn't think that was quite  
4 appropriate.

5                   Who do I have on for the government? Ms. Sassoon?

6                   MS. SASSOON: Yes. Good afternoon, your Honor. This  
7 is Danielle Sassoon for the United States, and I am joined by  
8 Mollie Bracewell and Lindsey Keenan for the United States, as  
9 well as Special Agent Kelly Maguire of the F.B.I.

10                  THE COURT: Good afternoon.

11                  And who do I have on for the Federal Defenders?

12                  MS. LENOX: Your Honor, good morning. For the Federal  
13 Defenders, Marne Lenox, and I am joined by my colleague Peggy  
14 Cross-Goldenberg, on behalf of Lawrence Ray.

15                  THE COURT: Good afternoon, Ms. Lenox and  
16 Ms. Cross-Goldenberg.

17                  And is Mr. Ray on the phone?

18                  THE DEFENDANT: Yes, your Honor.

19                  THE COURT: Thank you. Good afternoon, Mr. Ray.

20                  THE DEFENDANT: Good afternoon, your Honor.

21                  THE COURT: So before we get started and I turn it  
22 over to the government to give me an update, I just wanted to  
23 confirm on the record that all parties consent to this  
24 proceeding taking place by telephone and that they know that I  
25 am conducting the proceeding by telephone from outside of the

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1 district.

2 Ms. Sassoong, do you consent and do you know of any  
3 reason why this proceeding can't go forward as I have  
4 indicated?

5 MS. SASSOON: Your Honor, the government consents and  
6 does not know of a reason that we cannot proceed in this  
7 fashion.

8 THE COURT: Okay.

9 And, Ms. Lenox, do you and your client consent?

10 MS. LENOX: Yes, your Honor.

11 THE COURT: Mr. Ray, do you consent?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Thank you.

14 So, Ms. Sassoong, let me turn it over to you. I have  
15 got the government's -- the letter from the parties but that  
16 was on the government's letterhead and submitted by the  
17 government of May 22. It would be helpful for me to get an  
18 update on where we stand with respect to discovery and any  
19 other issues.

20 MS. SASSOON: Yes, your Honor.

21 As set forth in the letter, but just to recap since  
22 our last conference, we had a massive discovery production, our  
23 sixth production, that went out last week that had ten  
24 terabytes of data from the premises search as well as all of  
25 the scanned documents from the premises search and some other

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1 miscellaneous items. I apologize. I mean to say twelve  
2 terabytes of data.

3 There was an additional two terabytes of data that  
4 wouldn't fit on the drive we had from defense counsel. We  
5 requested an additional drive. That was provided to us just  
6 recently, within the past couple of days, and so now that we  
7 received the drive, we are loading that remaining data that is  
8 ready to be produced.

9 In addition --

10 THE COURT: Ms. Sassoona, how long will it take for the  
11 agents to download the remaining two terabytes of data and  
12 provide that to Ms. Lenox and defense counsel?

13 MS. SASSOON: They will get that drive next week. The  
14 issue is, we notified them last week of the need for a drive.  
15 We didn't get the drive until the middle of this week. Someone  
16 from our office then needs to pick it up, provide it to the  
17 F.B.I. The people who load the data at the F.B.I. on to these  
18 drives are not working five days a week in the office, and so  
19 we now have to wait until next week for somebody to be present  
20 in the office to load the drive, and then it will be ready and  
21 sent out.

22 THE COURT: Okay.

23 MS. SASSOON: So that nearly completes discovery.  
24 What is left are the phones that I have mentioned at a prior  
25 conference, the additional phones seized in the premises

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1 search, not the primary phone belonging to the defendant, but  
2 an additional bulk of phones that he had stored in his  
3 residence. My understanding of what those phones are, they are  
4 primarily phones that he seized from his victims.

5 And so the process of extracting those phones is still  
6 ongoing. We are prepared to produce several of them already.  
7 Three phones, the extraction is already complete. One phone  
8 has been determined to be not viable for extraction, so that  
9 will not be produced. Two phones are currently in the F.B.I.'s  
10 brute force process, and what that means is the phones couldn't  
11 be readily opened, so they are attached now to an  
12 encryption-breaking software, and that process of breaking into  
13 the phones could take weeks, it could take months, or we might  
14 end up never getting into them in advance of trial and so they  
15 won't be produced in that event.

16 Beyond that, there are four iPods that remain to be  
17 extracted, and those extractions will be small, and then there  
18 are ten additional phones that still have to be extracted and  
19 for which we still don't know. Some of those might not be  
20 viable, and some of those might require brute force to enter.

21 I want to emphasize, first of all, that the size of  
22 these phone extractions is very small compared to the discovery  
23 that's been produced. My understanding from F.B.I. is that we  
24 are talking in gigabytes and not terabytes, and so this will be  
25 a small supplemental production on top of what's already been

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1 produced. We will be producing these phones on an ongoing,  
2 rolling basis as they are extracted. We are working as quickly  
3 as we possibly can under the existing constraints, and the  
4 reason why this is taking some time is that it is a product of  
5 the speed of the machine, the encryption levels on the phone,  
6 and access to the in-office software that's required to do  
7 this, again, because there is not a full-time staff currently  
8 working at the F.B.I. in this department.

9 So that's all that remains other than potentially  
10 other documents that come in in response to subpoenas that are  
11 still outstanding. But beyond that, discovery is complete.  
12 And, in addition, we have produced the nonsensitive discovery  
13 to --

14 THE COURT: Let me, before you discuss the  
15 nonsensitive discovery, because I am interested in that, let me  
16 ask you a question about the cell phones and the iPods.

17 In the government's letter, the government stated that  
18 the extraction took slightly longer than expected, but you  
19 indicated that the F.B.I. anticipated completing the extraction  
20 of the phones early next week. That was a letter of May 22,  
21 last Friday. It's obvious that that was overly optimistic.  
22 What has happened between last Friday and today that leads to  
23 the revision, just so I understand?

24 MS. SASSOON: Yes, your Honor.

25 I think that primarily boils down to just

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1 miscommunication between us, the F.B.I., and within the F.B.I.  
2 there are the case agents and then the ones working in the lab  
3 on the phones, and we just had a mistaken impression that we  
4 could commit to speed, given that some of these phones are  
5 taking a very long time to get into, and we were under a  
6 mistaken impression that more phones had been completed. And I  
7 apologize for that overly optimistic assessment.

8 THE COURT: Do you have an estimate with respect to  
9 all of the -- the remaining devices, except for those that  
10 require brute force? I am going to put the brute force to the  
11 side, because I understand that that presents special issues.  
12 But for the remaining devices, what is your best estimate  
13 today?

14 MS. SASSOON: Yes. The challenge is that there are  
15 ten remaining phones, and I don't know which of those ten  
16 phones will require the brute-force process. For those that  
17 don't, I think it is safe to say that those phones will only  
18 take a matter of weeks and not much longer than that. And  
19 again, we are applying as much pressure as we possibly can. I  
20 know that this is an absolute priority to the F.B.I. The  
21 discovery deadline would have been tight to begin with, absent  
22 coronavirus, and with the virus obviously created additional  
23 hurdles, but we are applying as much pressure as we can to get  
24 this done is the best that I can say.

25 THE COURT: "Weeks" is very general, and I understand

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1 that you --

2 MS. SASSOON: Right.

3 THE COURT: -- may not be able to do better than  
4 something that is very general, but when you say "weeks," and  
5 not "months," are you saying that it is going to be less than  
6 two months or is there anything more specific you could give  
7 me?

8 MS. SASSOON: I would be surprised if -- for the  
9 phones that don't require brute force, I would be surprised if  
10 it took more than two months, and I'm very optimistic that the  
11 remaining phones that don't require brute force will take less  
12 than two months.

13 THE COURT: All right. You were going to talk about  
14 providing the nonsensitive discovery to the defendant at the  
15 MCC. Where do you stand with respect to that?

16 MS. SASSOON: Yes. So a hard drive that has all of  
17 the nonsensitive discovery produced to date across all of the  
18 productions has been provided to the prison, and we have also  
19 arranged for the defendant to have access to that hard drive as  
20 set forth in our letter, even though the law library is not  
21 operating right now.

22 In addition, we sent hard copies of some nonsensitive  
23 discovery to the defendant as well.

24 On top of that, it seems that the prison is developing  
25 better systems for videoconferencing with defense counsel and

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1 that we are moving in a positive direction on ability to review  
2 discovery, have access to counsel, and discuss strategy. And  
3 so all of that is a positive note.

4 THE COURT: The letter that you sent reflects that the  
5 BOP has informed you that defendants are now being given access  
6 to 30-minute video conferences with defense counsel, and that  
7 that provides some ability to review sensitive discovery until  
8 weekly visits resume. This may be a question better directed  
9 to Ms. Lenox, but do you have any further information about the  
10 ability of the defendant to review the sensitive material with  
11 counsel?

12 MS. SASSOON: Yes, your Honor.

13 MS. LENOX: Your Honor --

14 THE COURT: I'll ask you, Ms. Lenox, in a moment, but  
15 let me just direct myself to Ms. Sassoon and then -- and I have  
16 got one or two more questions for Ms. Sassoon, and then I will  
17 turn to the defendant.

18 MS. SASSOON: So as reflected in the letter -- this is  
19 Danielle Sassoon speaking -- it's my understanding in talking  
20 to defense counsel and the MCC that there will be no in person  
21 legal visits until at least June 30, 2020. Until that happens,  
22 the ability to review sensitive discovery is going to be  
23 limited to these videoconferences or to regular phone calls  
24 discussing the content of that discovery. I'm not aware of any  
25 measures beyond that.

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1                   THE COURT: And the last question that I have got for  
2 you relates to my request that you share with defense counsel  
3 what you would anticipate presenting at trial and material that  
4 you believe would be exculpatory. I want to confirm that you  
5 believe that you have now produced all of the *Brady* material  
6 that would be required to be produced except for what might be  
7 in the devices to which you have not had access.

8                   MS. SASSOON: Yes. We have produced *Brady* material in  
9 two different ways, both in the discovery production and we  
10 have also -- and disclosure letters to defense counsel,  
11 highlighting a couple of things that were not in discovery, and  
12 we have also provided redacted copies of 302 F.B.I. reports  
13 that contained information that could be construed as  
14 exculpatory. And so the government's position is that we are  
15 in compliance with our *Brady* obligation.

16                  THE COURT: Is it correct, Ms. Sassoong, that you have  
17 also made a commitment, the way you have put it is, to produce  
18 a preliminary exhibit list several weeks in advance of trial.  
19 The way I read "several weeks" is as "three," but you will  
20 correct me. What is the government's commitment with respect  
21 to preliminary exhibit lists?

22                  MS. SASSOON: Yes, your Honor. We are prepared to  
23 commit to producing a preliminary exhibit list three weeks in  
24 advance of trial subject to being able to supplement that  
25 exhibit list as we continue to prepare for trial up until

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1 trial.

2 THE COURT: Understood.

3 All right. Let me now turn, Ms. Lenox, to you, to get  
4 whatever you want to tell me about the state of the case.

5 Actually, before I do that, let me ask Ms. Sassoan  
6 whether there is anything else that I should be aware of? I'm  
7 not going to address right now the question of a trial date --  
8 I will move to that in a moment -- or the indication in your  
9 letter that defense counsel does not consider the assurances  
10 that you just provided to be adequate. But aside from those,  
11 is there anything else I should know about from you in the  
12 case?

13 MS. SASOON: Yes. I will just add that, in terms of  
14 our assurances, we are also in the process of responsiveness  
15 review. As I indicated to defense counsel, we completed a  
16 responsiveness review of the iCloud accounts, the phone  
17 belonging to the defendant, and are nearly complete on the  
18 e-mail responsiveness review, and all of that will be produced  
19 to defense counsel within the next couple of weeks. We are  
20 also undertaking a responsiveness review of the twelve  
21 terabytes of data that was extracted, and that is going to take  
22 more time but will likely be complete within two to three  
23 months.

24 THE COURT: Can you explain to me -- I have got a  
25 guess as to what you mean by a responsiveness review, but I

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1 would rather not guess. What is it, and what are the  
2 parameters?

3 MS. SASSOON: Yes, your Honor.

4 So the responsiveness review basically means with  
5 respect to the search warrants of electronic evidence, the  
6 search warrants authorize us, for example, with the iCloud, to  
7 receive from the provider the entire iCloud account over a  
8 particular time period. But when we extract an electronic  
9 device, it makes a forensic image of the entire phone. But we  
10 are only permitted to then keep and use for trial the data  
11 that's actually responsive to the specified list of the search  
12 warrant of the things that we can seize from these devices and  
13 keep, and that's generally what constitutes evidence of the  
14 subject offenses or evidence that indicates that a phone or an  
15 account belongs to the defendant, and so we are limited to keep  
16 doing a responsiveness review that allows us to keep the  
17 particular items that the search warrant authorizes us to keep.  
18 And so this narrows down the universe of e-mails or the  
19 universe of material from the iCloud from the entire account.

20 And with respect to the defendant's accounts, we  
21 produced to him, as an initial matter, the entirety of his own  
22 account. We will now be producing to him this more limited  
23 universe of what we deem responsive to the search warrant.

24 With respect to the iCloud account, that does narrow  
25 it down significantly to videos and photographs that we think

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1 are potential evidence for the trial and that is evidence of  
2 the subject offenses.

3 I wanted to be clear with the court that with the  
4 e-mails, for example, it is still going to be a very large  
5 universe of material. So the responsiveness review is not  
6 going to result in a set of 200 e-mails for the defense to  
7 review in preparation for trial. It is still going to involve  
8 thousands of e-mails because, in the government's view, for  
9 example, any e-mail sent between the defendant and one of his  
10 victims is responsive because some of those e-mails are  
11 extremely salient and might actually be exhibits at trial, and  
12 some of them are proof of association or the relationship or  
13 the history of the relationship, and even if we might not use  
14 every one of them at trial, they are still proof of the  
15 subject offenses and subject to seizure under the search  
16 warrants.

17 So I just didn't want the court to have a  
18 misimpression of the responsiveness review substantially  
19 narrowing down the e-mails to a very small universe that are  
20 easily digestible for the defense counsel. It is still going  
21 to be a large volume of documents that they obviously are  
22 capable of searching in the same way that we are capable of  
23 searching.

24 THE COURT: And can you give me the time table again  
25 with respect to the responsiveness review? You mentioned it,

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1 but I want to make sure I get it right.

2 MS. SASSOON: For the e-mails, the iCloud, and his  
3 primary phone that's going to be produced, if we get the  
4 necessary hard drives, within the next few weeks.

5 With respect to the twelve terabytes of data, given  
6 that that was only recently extracted and we only recently  
7 gained access to it and we have been focused on producing all  
8 of the discovery, that responsiveness review is going to take  
9 more time, and I would estimate that that's going to take about  
10 three months.

11 THE COURT: Thank you.

12 All right, Ms. Lenox, I will now hear from you with  
13 respect to the status of the case and the status of discovery  
14 and anything else that I should address or be aware of.

15 MS. LENOX: Thank you, your Honor. So I want to begin  
16 by -- this is Marne Lenox.

17 I want to begin by discussing the government's  
18 proposal that the sensitive material in this case can be  
19 reviewed effectively with Mr. Ray over videoconferencing  
20 capability at the MCC. We have, over the past several weeks,  
21 engaged in videoconferences with Mr. Ray that last  
22 approximately a half an hour each time. We are able to do this  
23 about once a week.

24 Ms. Cross-Goldenberg has been present for all of  
25 these videoconferences, so I'm going to let her talk more to

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1 the concern about and the reality of sharing sensitive  
2 discovery material effectively using the videoconference  
3 technology.

4 So I will do that now, and then I will come back to  
5 speak to the rest.

6 THE COURT: Ms. Cross-Goldenberg.

7 MS. CROSS-GOLDENBERG: Thank you, your Honor. This is  
8 Peggy Cross-Goldenberg.

9 So the way that the process works -- I'm not sure how  
10 much familiarity your Honor has with this, but we have to put  
11 in requests several days in advance to request any kind of  
12 audio or video call with our clients. The unit that Mr. Ray is  
13 on, there happens to be a particularly high demand, I think  
14 because many people have been ill and have special needs and so  
15 a great need to be speaking with their counsel. We can't pick  
16 the exact day or the exact time, and in fact we can't be told  
17 in advance exactly what time the call will happen, although we  
18 find out the night before what day the call will be. So the  
19 time range is supposed to be from 1:00 to 3:30 in the  
20 afternoon, although calls sometimes come in early or late.

21 As you can imagine, that makes it very hard to sort of  
22 block out the time and plan ahead of time. I have put in -- I  
23 think on the 27th I put in a request for a call for next week,  
24 but essentially that means trying to leave open every day from  
25 1 to 3:30, hoping that a call will be scheduled.

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1                   Mr. Ray is brought to a pretty large and echoey room  
2 at the MCC and sits in front of the computer for the  
3 videoconference. It is, as I said, very echoey. The court can  
4 recall when we tried to do the last conference in the case via  
5 video how hard it was between the, you know, just the echos and  
6 the feedback and all that. It is very hard to communicate.

7                   Mr. Ray doesn't have control of the computer, so he  
8 can't, for example, mute the volume, right? So if I'm -- if I  
9 were to play him an audio recording, for example, the feedback  
10 loop in terms of the volume picking up again on his end, it  
11 makes it extremely difficult.

12                  You know, many of the audio recordings and video  
13 recordings that we have been able to review so far exceeds the  
14 30-minute time block in length. So even if we get the call  
15 right on time and jump right in, a call, an entire week's worth  
16 of contact with Mr. Ray could be limited to just reviewing one  
17 partial audio recording. And that's not to mention any time  
18 that we need to discuss with him his health concerns or our  
19 investigative efforts or anything else happening in the case or  
20 on our end. So it is a huge challenge. It is, I think,  
21 impossible to overstate how big of a challenge it is.

22                  You know, the video is much better than audio,  
23 obviously, in terms of having to review things, but the -- as  
24 of now, there isn't a way for us to share our screen the way  
25 that there is when you are doing, for example, a zoom or a

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1 Skype conversation. So I couldn't pull up on my computer, for  
2 example, a sensitive document and have us both review it. I  
3 would have to have a hard copy of the document and hold it up  
4 to my computer's camera, which, you know, I think if you can  
5 imagine doing that, would make it very hard for the -- not only  
6 for the person on the other end to read it on their computer  
7 screen, especially when they can't control, like, you know, the  
8 size of the image or anything like that, but also just hard to  
9 just sort of review the words on the page together. So it is a  
10 challenge.

11 We have been very diligent in terms of requesting a  
12 call every week. We haven't always gotten them, and we are  
13 doing our best, but the system is -- it is better than nothing,  
14 but it is far from effective.

15 THE COURT: What is the volume of recorded calls or  
16 audiotapes that you have had to listen to? There is not a  
17 wiretap in this case, right?

18 MS. SASSOON: Your Honor, this is Danielle Sassoon. I  
19 can explain the nature of the audio and video evidence.

20 The defendant made a number of lengthy recordings of  
21 his interrogation sessions or of his victims giving false  
22 confessions, and so there are a lot of those in his e-mail and  
23 also in his iCloud and in the iClouds of other people.

24 One thing I can add on this point is that now that  
25 discovery has been produced and we are focused on preparing for

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1 a trial, we are going to start transcribing some of these  
2 recordings. Now, that's going to take time, and it is not  
3 something that's going to be complete in the next few weeks or  
4 even months, but we can produce those transcripts to defense  
5 counsel on a rolling basis as an aid to their preparation of  
6 their defense.

7 THE COURT: Thank you. That's a very helpful  
8 explanation.

9 Let me turn back to you, Ms. Cross-Goldenberg.

10 MS. CROSS-GOLDENBERG: If your Honor has --

11 THE COURT: Was there more that you had to report?

12 MS. CROSS-GOLDENBERG: No. I think that pretty much  
13 summarizes the videoconferencing and our ability to confer with  
14 Mr. Ray.

15 I will just also say, in addition to the time in  
16 question, the call often just gets ended without any warning or  
17 ability to wrap up, so then necessarily the next call has to  
18 sort of loop back to where we were the previous week. So it is  
19 just incredibly inefficient.

20 THE COURT: So I don't know if there is an application  
21 now with respect the issues that you have raised or if there is  
22 much that I can do about it. I will hear from you.

23 I will say that I thought Ms. Sassoon's interjection  
24 was valuable in that I would assume, from the government's  
25 perspective, they would understand the need for the defense to

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1 have time to prepare and that the challenge that you have  
2 mentioned is a particular concern obviously for the defendant,  
3 but it is a concern that the government, I would assume, has an  
4 interest in making sure is addressed in one way or another.

5 But I will turn it over to you, Ms. Cross-Goldenberg,  
6 or you, Ms. Lenox, about whether there is an application.  
7 Again, it is very helpful background information.

8 MS. LENOX: This is Marne Lenox.

9 Your Honor, we don't have an application at this time,  
10 but we do want to make clear to the court and to the government  
11 that this presents a tremendous hurdle for Mr. Ray's  
12 participation in his defense and for our preparation for trial  
13 and for motion practice in this case.

14 The reality is that even if the government begins to  
15 start transcribing some of these recordings, it sounds as  
16 though that won't happen for at least a couple of months, and  
17 even if and when that does happen, certainly the  
18 transcriptions will not be a replacement for the actual video  
19 and audio recordings themselves insofar as Mr. Ray will have to  
20 review those in order to participate effectively in his own  
21 defense.

22 In addition, the government has indicated that there  
23 is still a number of materials outstanding and that its  
24 responsiveness review will not substantially narrow the  
25 universe of materials with respect to, for instance, the e-mail

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1 communications between the alleged victims and Mr. Ray, which  
2 comprise, you know, terabytes worth of data -- literally  
3 thousands and thousands of pages -- for review, most of which  
4 have been marked sensitive.

5 So while the government has certainly taken steps to  
6 try to ameliorate these challenges, they still very much exist  
7 and are very real while Mr. Ray remains incarcerated at the  
8 MCC.

9 The government indicated that last week, on May 21, it  
10 sent hard copies of the nonsensitive discovery to Mr. Ray, and  
11 it also sent a hard drive of nonsensitive discovery to Mr. Ray  
12 the following day, on May 22. I spoke with Mr. Ray briefly  
13 before this status conference this morning, and he indicated  
14 that he has not yet received any hard copy material nor the  
15 hard drive from the government.

16 So unfortunately we don't have anything to report on  
17 how effective it will or will not be for Mr. Ray to review  
18 these nonsensitive materials on his own. Certainly the hard  
19 copies will be helpful. But to the extent that the hard copies  
20 make up only a very small portion of -- the hard copies of  
21 nonsensitive discovery make up a very small portion of the  
22 total amount of discovery to be reviewed in this case, I think  
23 it is extraordinarily difficult to foresee a scenario in which  
24 Mr. Ray can effectively participate in his defense even if he  
25 is able to review hard drive -- materials on the hard drive,

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1 nonsensitive materials on the hard drive for three hours a  
2 week.

3 As Ms. Cross-Goldenberg alluded to, some of the audio  
4 and video that we have reviewed so far from the government's  
5 production last far longer than the half-hour videoconference.  
6 Some of the audio recordings last even longer than the  
7 hour-long session that the government has come to an agreement  
8 with the Bureau of Prisons that the Bureau of Prisons would  
9 provide Mr. Ray while he is incarcerated to review his  
10 discovery materials.

11 So we just want to be perfectly clear that while we  
12 understand and appreciate that the government is making efforts  
13 and working with the Bureau of Prisons to allow Mr. Ray to  
14 review the discovery in this case, without a more pointed  
15 responsiveness review from the government, without a greater  
16 narrowing, a more specific narrowing of the truly relevant and  
17 salient materials for Mr. Ray's trial, I don't think there is  
18 any conceivable way in which, given the current  
19 circumstances -- and even not with the current circumstances --  
20 Mr. Ray will be able to review the 15-plus terabytes of  
21 discovery that the government has turned over and is continuing  
22 to turn over in this case. I think that the government -- the  
23 government's representation that it will provide a preliminary  
24 exhibit list three weeks in advance of trial does very, very  
25 little for the defense in terms of its preparation for this

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1 case.

2 I also want to note that because of the global  
3 pandemic, which is of course in no one's control, the  
4 investigation of the defense case has been largely stymied. We  
5 can't effectively investigate this case while there is an  
6 ongoing pandemic and stay-at-home orders are in effect. We  
7 can't speak to witnesses at their homes. We can't go to speak  
8 to witnesses at their places of business. We can't go out and  
9 speak to other people who may help us communicate better with  
10 witnesses in this case.

11 It is simply not realistic to expect that Mr. Ray  
12 while incarcerated and the defense counsel while this pandemic  
13 is ongoing, and long afterwards, will be able to effectively  
14 review and prepare for Mr. Ray's trial, given all of the  
15 constraints that have been imposed on us, and that also  
16 includes our ability to meet with Mr. Ray in person and develop  
17 a relationship with Mr. Ray, which is necessary, again, to  
18 effectively represent him in this case.

19 Mr. Ray was indicted in early February. Between then  
20 and late February, when the MCC went on a lockdown for the  
21 search of a gun in the facility for eight days, during that  
22 period of time, we were only able to meet with Ray a couple of  
23 times in person apart from his appearances in court. We were  
24 able to meet with him one time in person between the lockdown  
25 that ended at the MCC for the search of the gun and the time

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1 that the lockdown began because of the coronavirus on March 13.  
2 So that means that over the past several months we have not  
3 been able to engage thoroughly with our clients and develop a  
4 relationship that is necessary to effectively represent Mr. Ray  
5 going forward.

6 So these are just some of the myriad hurdles that we  
7 have been contending with in preparing for trial in this case.

8 So while we do not have an application for your Honor  
9 at this time, we will likely make an application at some point  
10 in the future, depending on what happens once Mr. Ray receives  
11 the discovery materials that the government has sent and his  
12 ability to review those materials as the government has laid  
13 out based upon their agreement with the Bureau of Prisons.

14 THE COURT: Let me make an inquiry of Ms. Sassoon.

15 Ms. Sassoon, I'm not going to order you to provide an  
16 earlier witness list or to pare back your responsiveness review  
17 because, number one, that formal application has not been made  
18 to me and, number two, I'm not aware of any law that would give  
19 me the authority to do that, but what defense counsel has  
20 presented is concerning. I'm sure it is also concerning to  
21 you.

22 And so my question to you is what can you do to help  
23 address those issues? Can you been in touch with the MCC, for  
24 example, to make sure that the nonconfidential material --  
25 nonsensitive material makes its way to Mr. Ray? Recognizing

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1 that there are rights of victims involved and there is law that  
2 gives those victims protection, and I am not asking that  
3 anything be done that would undermine the rights of the  
4 victims, is there a way to review the material to make sure  
5 that what is held back as sensitive is truly sensitive and that  
6 there is more material that's deemed nonsensitive? Are there  
7 any other things that you can come up with right now that would  
8 help address this issue, which is an issue?

9 MS. SASSOON: Yes, your Honor.

10 I hope the court and defense counsel can both  
11 appreciate that the government is trying to be creative here  
12 and is trying to be helpful. I do want to clarify something  
13 about that defense counsel said that could potentially be  
14 misunderstood.

15 In terms of the discovery that's been marked  
16 nonsensitive, despite the fact that the defendant's e-mail  
17 account includes e-mails with victims, we produced as  
18 nonsensitive the entirety of his own e-mail accounts, of which  
19 there are several, whereas we have marked the e-mail accounts  
20 of his victims and associates as sensitive because those are  
21 not his own e-mail accounts and contain sensitive material.

22 So he will have access, once we sort out getting him  
23 this hard drive, which I will do after this call, he will have  
24 access to his e-mail accounts on this hard drive within the  
25 prison which is a substantial portion of the evidence. And so

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1 he will be able to review that even separate and apart from  
2 calls with counsel.

3 Some of the other difficulties that defense counsel  
4 highlights -- I don't want to minimize them, but some of those  
5 things are a feature of any case, absent a pandemic, that  
6 involves this volume of discovery. It is a lot of material to  
7 go through. It is a lot to prepare for trial. And that is the  
8 nature of these cases.

9 And there is a possibility that as soon as the end of  
10 June they will be able to resume visits and review this  
11 material with their clients, and there is certainly a good  
12 prospect that they will be able to start doing that well in  
13 advance of the trial, which our proposed date is many, many  
14 months away still. So some challenges are just by virtue of  
15 having a case with a lot of evidence.

16 With respect to the twelve terabytes of data, we have  
17 made a decision to do a more -- to do a narrower responsiveness  
18 review. So whereas with the e-mails, like I said, still, it's  
19 going to be high volume of e-mails with the twelve terabytes of  
20 data. We really are trying to substantially narrow that volume  
21 of material in the course of the responsiveness review. I  
22 can't represent right now whether we will be able to reduce it  
23 from twelve terabytes to one or twelve terabytes to seven  
24 because that review is ongoing and I don't have a firm handle  
25 on everything that's in that electronic material. But we have

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1 decided to do a narrower responsiveness review in part to make  
2 the volume of evidence more manageable for the defense and for  
3 us, candidly.

4 THE COURT: Okay. All right. Thank you.

5 Let me turn now back to you, Ms. Lenox. Is there  
6 anything else that you would like to raise today or that I  
7 should address?

8 MS. LENOX: Yes, your Honor.

9 I am not making -- well, your Honor, to the extent  
10 that Ms. Sassoong has represented that the government is going  
11 to narrow its responsiveness review of the premises search  
12 material in large part out of concern for the issues raised by  
13 defense counsel, I would ask that your Honor order the  
14 government to narrow its responsiveness review of the  
15 electronic materials in the same manner. I'm not sure what is  
16 preventing the government -- if it is able to narrow its  
17 responsiveness review of the twelve terabytes from the premises  
18 search, I'm not sure why that same narrowing cannot also be  
19 applied to the electronic materials that have been provided,  
20 which I think would help, at least in part, to alleviate some  
21 of the burden of Mr. Ray's review of all of the material.

22 THE COURT: Do you have authority for the proposition  
23 that I can impose that order on the government?

24 MS. LENOX: I do not offhand have authority for that.  
25 I am happy to write on this if your Honor is not inclined to

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1 order the government to do so today, but I would note that on  
2 our last -- at our last status conference in April your Honor  
3 did order the government to identify for the defense the most  
4 significant part of discovery, both what the government would  
5 anticipate presenting at trial and material that it believes to  
6 be exculpatory.

7 To the extent that the government has noted that the  
8 e-mails between Mr. Ray and his alleged victims are varying  
9 degrees of relevance or salience as far as trial evidence goes,  
10 I think it would be helpful for the government -- given the  
11 order that your Honor made at the last status conference, it  
12 would be helpful for the government to identify the specific  
13 e-mails within the larger swath of responsive e-mails between  
14 Mr. Ray and the alleged victims that it finds particularly  
15 salient for trial.

16 THE COURT: So I'm not going to enter an order today.  
17 If you want to make a motion, you can make the motion at any  
18 time, and the government will respond to it. I'm not telling  
19 you whether you should make the motion or not, but I am telling  
20 you that, you know, my inbox is open for a motion any time you  
21 think you have got a meritorious motion to make. So --

22 MS. SASSOON: This is Danielle Sasso. May I  
23 respond, your Honor, briefly?

24 THE COURT: Sure.

25 MS. SASSOON: So, first of all, just to clarify the

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1 government's understanding, the government did not come away  
2 from the last conference with an understanding that the court  
3 had ordered us to do anything beyond a responsiveness review  
4 and a production of *Brady* material.

5 THE COURT: In fact, Ms. Sassoan, I will cut you off.  
6 I did not enter an order that went beyond that, and I took  
7 Ms. Lenox's characterization of what I said not to be binding  
8 on me, and so I did not enter an order to -- that was narrower  
9 than what you have just stated.

10 I did make a request that I thought it would be  
11 helpful to move the case along that if, to the extent you  
12 identified material that was particularly salient and that you  
13 intended to use at trial, that you identify that for the  
14 defense, because that is one way of helping to alleviate some  
15 of the issues that Ms. Lenox was describing. But that request  
16 should not be misconstrued as an order.

17 MS. SASSOON: Thank you, your Honor. And the  
18 government took that to heart, and that is why we are taking  
19 the steps we are taking and also has decided to proceed with  
20 this narrower review of the twelve terabytes of data. But we  
21 are going to be reluctant to do that if, then, these steps,  
22 which we don't think are required by law, are then used against  
23 us to force us to do things that are similarly not required by  
24 law.

25 The e-mail responsiveness review is nearly complete.

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1 That is done. And we are now moving forward to the twelve  
2 terabytes of data. And with respect to both, we are going to  
3 do it in a manner that we think is consistent with the law, and  
4 I just wanted to put that on the record.

5 THE COURT: Ms. Sasso, the only thing that I think I  
6 ordered or permitted was for the defense to make a motion any  
7 time they thought they had a meritorious motion. I take it you  
8 have no quarrel with that.

9 MS. SASSOON: Yes, your Honor.

10 THE COURT: I should say, up until the end date for  
11 making motions, the motion date that I have set in October.  
12 Beyond that, we can figure out some orderly way to do it and I  
13 will do that.

14 MS. Lenox, anything else that I should address today?

15 MS. LENOX: I don't believe so, but I'm going to leave  
16 it to Ms. Cross-Goldenberg in case there is anything else I  
17 have forgotten that she thinks needs to be said.

18 MS. CROSS-GOLDENBERG: I don't think so, your Honor.  
19 This is Peggy Cross-Goldenberg. Thank you.

20 THE COURT: Okay.

21 So I have in the letter in front of me the proposal of  
22 the parties that trial in this case start on January 19 of  
23 2021, with the trial expected to last approximately three  
24 weeks. I will schedule a trial for that date, beginning on  
25 that date, and lasting approximately three weeks.

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I would note that the letter notes that defense counsel has raised questions about whether, given the current situations with COVID in this state continue, the defense potentially not being able to prepare for trial on that date. I'm going to go ahead and schedule the trial, again, for January 19. But should the health conditions continue and should they make it impossible for the defense to effectively represent their client, I will entertain an application by you, Ms. Lenox or Ms. Cross-Goldenberg. We will address that as circumstances develop. I know these are extraordinary circumstances we have now.

Would it be appropriate -- let me ask Ms. Sassoон in the first instance. I excluded time at our last conference through the motion date. Would it be appropriate for me to exclude time up until January 19, 2021 at this time?

MS. SASSOON: The government would be comfortable with that. Obviously we are covered until the motion date. And once the motions are filed, as long as they are pending, time will be automatically excluded. But excluding it until January 19 spares us from having to make the motion repeatedly. It really depends whether defense counsel will consent to that.

THE COURT: So let me turn now to you, Ms. Lenox. What's your position?

MS. LENOX: I would consent to excluding time until the motions date; and then, when that happens, coming back to

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1 the issue of excluding time until the 2021 trial date.

2 THE COURT: Okay. So I will not exclude time up until  
3 January 19, 2021. I would like to correct what either was a  
4 misstatement by me at the last conference or a  
5 mistranscription. From my review of the transcript, it  
6 reflects that time was excluded to October 29, 2020. I believe  
7 that the motion date is October 19, 2020. So my exclusion of  
8 time, pursuant to 18 U.S.C. 3161(h)(7)(A), should be to October  
9 19, 2020, and that was to permit the parties to review  
10 discovery, to have consultations between themselves, for the  
11 defense to be able to consult with their client, and for  
12 motions to be prepared and to be made.

13 Am I right -- let me ask Ms. Sassoan -- that the  
14 motion date is October 19?

15 MS. SASSOON: One moment, your Honor.

16 (Pause)

17 MS. SASSOON: That is the date on my calendar for the  
18 hearing on the motion.

19 THE COURT: All right. So that will be what the  
20 exclusion is.

21 It does seem to me that, given the issues with respect  
22 to discovery, I should have another conference in this case  
23 before motions are filed. We should have conferences on a  
24 periodic basis just to make sure that any issues that come up  
25 are being addressed. I don't think I need to do it every four

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1 weeks, but maybe every six weeks. Do the parties have a view  
2 with respect to that? That would put us at the beginning of  
3 July.

4 MS. LENOX: This is Marne Lenox. That's fine, your  
5 Honor.

6 MS. SASSOON: Yes, your Honor. This is Danielle  
7 Sassoon. That's fine to the government. Six to eight weeks  
8 from now sounds about right.

9 THE COURT: Let me just look at the calendar for a  
10 moment.

11 Matt, why don't we look at the week of July 20?

12 THE DEPUTY CLERK: July 22 at noon?

13 THE COURT: How does that work for the parties?

14 MS. SASSOON: That's good for the government.

15 MS. LENOX: This is Marne Lenox. That's fine for the  
16 defense.

17 THE COURT: Good. All right. So I will speak to you  
18 on July 22 at noon. We will calendar that as a call on this  
19 calling number. The calling number will be reflected on the  
20 docket. If the courthouse becomes more accessible, we may  
21 change that to an in-person conference, but I'm not going to  
22 make that decision now.

23 Anything else from the government today?

24 MS. SASSOON: No. Thank you, your Honor.

25 THE COURT: Anything else, Ms. Lenox, from you or from

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2 Ms. Cross-Goldenberg?

3 MS. SASSOON: This is Marne Lenox. No. Thank you,  
your Honor.

4 THE COURT: Okay. Thank you all. Try to stay safe  
5 and healthy, and we will speak to you in July.

6 THE DEFENDANT: Thank you, your Honor.

7 MS. LENOX: Thank you.

8 MS. CROSS-GOLDENBERG: Thank you, your Honor.

9 MS. SASSOON: Thank you.

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